

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Tsui	Team: Squad #15	CCRB Case #: 202001154	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/11/2020 11:10 AM	Location of Incident: West 54 St 9th Avenue, New York, NY 10019	18 Mo. SOL 3/28/2022	Precinct: 18		
Date/Time CV Reported Tue, 02/11/2020 1:32 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 02/11/2020 1:32 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Acquaviva	03348	934368	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Jonathan Acquaviva	Force: Police Officer Jonathan Acquaviva used physical force against § 87(2)(b)	
B . POM Jonathan Acquaviva	Abuse: Police Officer Jonathan Acquaviva issued a summons to § 87(2)(b)	
C . POM Jonathan Acquaviva	Abuse: Police Officer Jonathan Acquaviva threatened § 87(2)(b) with the use of force.	

Case Summary

On February 11, 2020, § 87(2)(b) filed this complaint in person at the CCRB.

On February 11, 2020, at approximately 11:10 AM, the vicinity of West 54th Street and 9th Avenue in Manhattan, § 87(2)(b) drove a yellow Nissan Nv-200 taxi cab. § 87(2)(b) waited at a traffic light behind two additional vehicles. When the light turned green, § 87(2)(b) continued to drive. At this time, Police Officer Jonathan Acquaviva of the 18th Precinct pulled § 87(2)(b) over. PO Acquaviva approached § 87(2)(b) and told § 87(2)(b) that he made an improper turn at the traffic light. PO Acquaviva requested § 87(2)(b) ID and told him that he will be issued a summons. PO Acquaviva went back to his vehicle. When PO Acquaviva returned with § 87(2)(b) documents and Summons # § 87(2)(b) (Board Review 14), for making an improper turn, § 87(2)(b) disputed that he made an improper turn at the traffic light. § 87(2)(b) pointed his finger at PO Acquaviva's face and called PO Acquaviva "a piece of shit". PO Acquaviva punched § 87(2)(b) hand away (**Allegation A: Force**, § 87(2)(g)). PO Acquaviva asked for § 87(2)(b) ID for a second time. § 87(2)(b) refused. § 87(2)(b) told PO Acquaviva that he will file a complaint against him. PO Acquaviva returned to his vehicle and issued § 87(2)(b) Summons # § 87(2)(b) (Board Review 14), for failing to comply to lawful order (**Allegation B: Abuse of Authority- Retaliatory Summons**, § 87(2)(g)). PO Acquaviva told § 87(2)(b) that if he exited his vehicle, PO Acquaviva will use his Taser on him (**Allegation C: Abuse of Authority- Threat of Force**, § 87(2)(g)). § 87(2)(b) was not arrested or injured as of result of this incident.

PO Acquaviva's BWC video was obtained by the investigation (Board Review 4) and attached to IA #42. The BWC video was summarized in IA #43.

Allegation (A) Force: Police Officer Jonathan Acquaviva used physical force against § 87(2)(b).

It is undisputed that § 87(2)(b) was stopped in his Nissan taxi by PO Acquaviva. PO Acquaviva approached § 87(2)(b) driver side and issued § 87(2)(b) a summons for making an improper turn at a red light. § 87(2)(b) and PO Acquaviva disputed the improper turn summons.

According to § 87(2)(b) CCRB interview (Board Review 1), § 87(2)(b) stated that he waited for the traffic light located at the incident location to turn green behind two other vehicles. When the light turned green, and after the first and second vehicle turned onto 9th Avenue in succession, § 87(2)(b) drove down West 55th Street and on to West 54th Street. At this time, PO Acquaviva followed § 87(2)(b) in a marked Ford Taurus with turret lights activated. PO Acquaviva ordered § 87(2)(b) to pull over through the police loudspeaker. At this point, § 87(2)(b) had already pulled over. PO Acquaviva approached § 87(2)(b) driver side door. § 87(2)(b) lowered his driver side window. PO Acquaviva told § 87(2)(b) that he turned before the second vehicle at the traffic light. § 87(2)(b) exited his vehicle and told PO Acquaviva that he was the last vehicle to make the turn. PO Acquaviva requested § 87(2)(b) driver's license and registration. § 87(2)(b) went back inside his vehicle to retrieve the requested documents.

§ 87(2)(b) gave his driver's license and registration to PO Acquaviva. § 87(2)(b) and PO Acquaviva returned to their respective vehicles. § 87(2)(b) waited for PO Acquaviva. When PO Acquaviva returned, he issued § 87(2)(b) Summons # § 87(2)(b) for making an improper

turn. § 87(2)(b) disputed the summons with PO Acquaviva and told PO Acquaviva that his turn at the traffic light was not improper. § 87(2)(b) pointed his finger at PO Acquaviva. PO Acquaviva used his right hand and punched § 87(2)(b) through § 87(2)(b) lowered driver side window. § 87(2)(b) blocked PO Acquaviva's punch with the back of his right hand.

According to PO Acquaviva's CCRB interview (Board Review 15), he stated that he observed § 87(2)(b) drove into incoming traffic and made an illegal left turn to cut off a vehicle at a red traffic light. PO Acquaviva also observed § 87(2)(b) failed to turn signal blinker on when he made the improper turn. When PO Acquaviva returned to hand § 87(2)(b) his first summons, § 87(2)(b) pointed his finger at PO Acquaviva's face and called him "a piece of shit". § 87(2)(b) finger was less than one foot away from PO Acquaviva's face. PO Acquaviva swiped § 87(2)(b) fingers downwards and away from his face with an open hand.

According to PO Acquaviva's BWC video (Board Review 4), at the internal timestamp 11:13:04, PO Acquaviva walks up to § 87(2)(b) vehicle to give § 87(2)(b) his summons. § 87(2)(b) tries to open his driver side door twice. PO Acquaviva stops § 87(2)(b) from opening the driver side door with his hand, each time. PO Acquaviva instructs § 87(2)(b) to not open the door and to remain in his vehicle. PO Acquaviva reaches inside § 87(2)(b) rolled down car window and points at § 87(2)(b) improper turn summons. § 87(2)(b) points his finger at PO Acquaviva's face. PO Acquaviva tells § 87(2)(b) to not put his finger in his face or go into his safety zone. § 87(2)(b) points at PO Acquaviva again and tells him that he will point his finger. PO Acquaviva swipes § 87(2)(b) finger away with an opened hand.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Jonathan Acquaviva issued a summons to

§ 87(2)(b)

It is undisputed that PO Acquaviva asked § 87(2)(b) for his driver's license again after § 87(2)(b) pointed his finger at PO Acquaviva's face. § 87(2)(b) did not provide PO Acquaviva with his driver's license when requested for a second time by the officer. PO Acquaviva then issued § 87(2)(b) Summons #§ 87(2)(b) for failing to comply to a lawful order.

According to § 87(2)(b) CCRB interview (Board Review 1), after PO Acquaviva punched him, he told PO Acquaviva that he will file a complaint against him. PO Acquaviva requested § 87(2)(b) driver's license for a second time and told him that he will issue § 87(2)(b) a summons for disorderly conduct. Ultimately, PO Acquaviva issued a summons for § 87(2)(b) for failing to comply to a lawful order (Board Review 9).

According to PO Acquaviva's CCRB interview (Board Review 15), he stated that he asked for § 87(2)(b) driver's license for a second time because he wanted § 87(2)(b) to remain inside his vehicle. PO Acquaviva intended to return § 87(2)(b) driver's license to § 87(2)(b) once he returned and remained in his vehicle. PO Acquaviva stated that given the traffic conditions on 9th Avenue at the time of the incident, it was unsafe for § 87(2)(b) to standing out of his vehicle. PO Acquaviva returned to his patrol vehicle to issued § 87(2)(b) Summons

#§ 87(2)(b) for failure to comply with lawful order.

It was PO Acquaviva's understanding that when § 87(2)(b) refused provide his driver's license the second time it was requested, he was deemed failing to comply to a lawful order. Prior to § 87(2)(b) refusal, PO Acquaviva did not recall if § 87(2)(b) violated laws that he could have been summonsed for other than the violations made at the traffic light. PO Acquaviva intended to only issue § 87(2)(b) one summons for making an improper turn. After the first summons was handed to § 87(2)(b) and § 87(2)(b) disputed with PO Acquaviva, pointed his finger at PO Acquaviva's face and called him "Stupid." PO Acquaviva instructed § 87(2)(b) to leave the incident location and to drive away. PO Acquaviva stated that he could have issued three to four additional Vehicle Traffic Law summonses for § 87(2)(b) improper turn at the traffic light. PO Acquaviva wanted to be fair and did not want § 87(2)(b) driver's license penalized and therefore issued § 87(2)(b) only one additional summons for failing to comply with a lawful order.

In PO Acquaviva's BWC video (Board Review 4), at internal timestamp 11:13:04, PO Acquaviva hands § 87(2)(b) his improper turn summons. PO Acquaviva tells § 87(2)(b) that he can fight the summons in court. § 87(2)(b) remains seated in the driver seat of his vehicle. § 87(2)(b) disputes with PO Acquaviva. PO Acquaviva tells § 87(2)(b) to not point at his face. § 87(2)(b) calls PO Acquaviva "Stupid." Police Office Acquaviva tells § 87(2)(b) that he will write him another summons. PO Acquaviva requests for § 87(2)(b) driver's license. § 87(2)(b) tells PO Acquaviva that he will not give him his driver's license, because PO Acquaviva had already issued him one ticket. PO Acquaviva tells § 87(2)(b) that he issued him a ticket for making an improper turn and "Don't make it worse." PO Acquaviva tells § 87(2)(b) to drive away. § 87(2)(b) calls PO Acquaviva "A piece of shit", twice. PO Acquaviva asks for § 87(2)(b) driver's license multiple times and instructs § 87(2)(b) to put his vehicle in park and to exit. When § 87(2)(b) attempts to exit his vehicle, PO Acquaviva pushed § 87(2)(b) driver side door shut and instructs him to remain inside the vehicle. PO Acquaviva tells § 87(2)(b) that he will write him a summons for disorderly conduct.

Patrol Guide Procedure 203-10 (Board Review 11) prohibits engaging in conduct prejudicial to the good order efficiency or discipline of the Department.

NY Vehicle and Traffic Law Section 1102 (Board Review 20), states that, "No person shall fail or refuse to comply with any lawful order or direction of any police officer or flagperson or other person duly empowered to regulate traffic."

In People v. Bohn, 397 N.Y.S.2d 514 (1977) (Board Review 21), the court ruled that 1102 of the Vehicle and Traffic Law is designed to compel obedience to an order of a police officer regulating the control or movement of traffic. The failure or refusal of a motorist to exhibit a license or registration when properly requested is not a violation that falls within the scope of Section 1102.

Although PO Acquaviva initially threatened to issue § 87(2)(b) a summons for disorderly conduct, he was ultimately issued a summons for failing to comply with a lawful order, NY Vehicle Traffic Law Section 1102. In this case, the type of summons issued is immaterial to the complaint. The investigation finds that the refusal of a motorist to exhibit a license when properly requested by a police officer is not a violation that falls within the scope of NY Vehicle Traffic Law Section 1102 (Board Review 20). PO Acquaviva knew that § 87(2)(b) was not an unlicensed driver as he had previously provided his driver's license to the officer. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Jonathan Acquaviva threatened § 87(2)(b) with the use of force.

It is undisputed that Police Acquaviva drew his Taser and threatened to deploy it on § 87(2)(b) if he exited his vehicle. When PO Acquaviva made the threat, § 87(2)(b) was seated inside his vehicle.

During § 87(2)(b) CCRB interview (Board Review 1), § 87(2)(b) stated that he disputed with PO Acquaviva about his second summons, #§ 87(2)(b). When § 87(2)(b) opened his driver side door and attempted to exit his vehicle, PO Acquaviva pushed the door shut. PO Acquaviva told § 87(2)(b) that if he exited his vehicle, he would use his Taser on him. § 87(2)(b) remained seated in his vehicle. PO Acquaviva pointed his Taser at § 87(2)(b) from approximately six feet. The Taser did not produce noise and § 87(2)(b) did not see a red dot coming from it. PO Acquaviva had his Taser drawn for approximately one minute.

During PO Acquaviva's CCRB interview (Board Review 15), PO Acquaviva stated that when § 87(2)(b) cursed at him, he became cautious and did not want § 87(2)(b) to exit his vehicle. From his position, PO Acquaviva saw § 87(2)(b) steering wheel and the side of § 87(2)(b) head and could not see where § 87(2)(b) hand were. PO Acquaviva told § 87(2)(b) that he had a Taser and instructed him to not exit his vehicle again. PO Acquaviva initially denied drawing his Taser but when presented with his BWC video footage (Board Review 4) that showed him drawing his Taser. PO Acquaviva stated that he drew his Taser because he felt that § 87(2)(b) could have been a danger to his safety. PO Acquaviva felt that way because he did not know what § 87(2)(b) was inside nor why tried to exit his vehicle. PO Acquaviva stated that he knew § 87(2)(b) had a history of prior arrests and summonses issued. It was PO Acquaviva's understanding that the use of his Taser is permitted when he is in any sort of danger of someone exiting their vehicle, or if he did not know what items a person had on their them. PO Acquaviva stated that the use of a Taser would deescalate the situation.

According to PO Acquaviva's BWC (Board Review 4), at the internal timestamp of 11:20:40, PO Acquaviva backs away from § 87(2)(b) vehicle and tells him "You get out again I'm gonna Taser you." PO Acquaviva holds his Taser in his hand. PO Acquaviva did not point at § 87(2)(b).

Patrol Guide Procedure 221-01 (Board Review 12) regarding the use of force states that a "de-escalatory action is one taken "to stabilize a situation and [...] to gain the voluntary compliance of the subject, when appropriate and consistent with personal safety, to reduce or eliminate the necessity to use force."

Patrol Guide Procedure 221-08 (Board Review 13) regarding the use of conductive energy weapons states that police officers must "Consider the totality of the circumstances when deciding the reasonable amount of force necessary to overcome resistance when effecting an arrest or when taking a mentally ill or emotionally disturbed person into custody. Some factors to consider when determining the appropriate use of force... ACTIVE RESISTING – Includes physically evasive

movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. ACTIVE AGGRESSION – Threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. PASSIVE RESISTANCE – Minimal physical action to prevent a member from performing their lawful duty. For example, a subject failing to comply with a lawful command and stands motionless and/or a subject going limp when being taken into custody”.

§ 87(2)(g)

§ 87(2)(b) was already in compliance with PO Acquaviva's instruction to remain inside his vehicle when PO Acquaviva threatened him. § 87(2)(b) was seated in the driver seat and had both of his hands visible. PO Acquaviva did not attempt to physically control § 87(2)(b) nor did § 87(2)(b) display physical evasive movements. § 87(2)(b) was not actively resisting. Although § 87(2)(b) cursed at PO Acquaviva, he did not verbal threaten to assault PO Acquaviva. The act of cursing at a police officer does not constitute active aggression and § 87(2)(b) actions could not have been considered passive resistance. PO Acquaviva's understanding of the use of his Taser is that if he felt that he was in danger because of someone exiting their vehicle, or if he did not know what items person has on them, a Taser would deescalate the situation. In this case, PO Acquaviva's threat to § 87(2)(b) did not deescalate the situation.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- The is the first complaint § 87(2)(b) has been a party of (Board Review 5).
- PO Acquaviva has been a member-of-service for 16 years and had two prior CCRB complaints with five total allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- A Notice of Claim request was submitted to the NYC Office of the Comptroller on November 2, 2020. (Board Review 17). § 87(2)(b) did not file any claims with the city of New York. (Board Review 19).

Squad No.: 15

Investigator: Jeffrey Tsui Inv. Jeffrey Tsui 01/19/2022

CCRB Case # 202001154

Date _____

Reviewer: _____

Signature Print Title & Name Date